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# **Managing for the 21<sup>st</sup> Century: EEO Fundamentals for Supervisors**

## **Participant Guide**

Technology Enhanced Learning (TEL) Interactive

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April 2010



# Welcome

Welcome to this TEL (Technology Enhanced Learning) training event. We are excited that you will be joining us today for *Managing for the 21<sup>st</sup> Century: EEO Fundamentals for Supervisors* and look forward to helping you get as much out of this time as possible.

Your participation is an important part of this class. If you have a question, don't hesitate to ask. There are probably several others in the class who have the same question – you might as well be the one to ask. It is our goal that you leave class today with no unanswered questions.

## How to Interact with the Instructor

We encourage you to ask questions and share your comments with the instructor(s) throughout this TELNPS course.

If you were physically in the classroom with the instructor, you would raise your hand to let her/him know you had a question or comment. Then you would wait for the instructor to recognize you and ask for your question. We are all familiar with that “protocol” for asking questions or making comments.

With TELNPS courses, there is also a “protocol” to follow to ensure you can easily ask questions and others can participate as well. It may seem a little strange at first asking a question of a

TV monitor. Remember, it is the instructor you are interacting with and not the monitor. As you ask more questions and participate in more TELNPS courses, you will soon be focusing only on the content of your question and not the equipment you are using to ask it.

As part of the TEL station equipment at your location, there are several push to talk microphones. Depending on the number of students at your location, you may have one directly in front of you or you may be sharing one with other students at your table.

**When you have a question, press and hold down the push to talk button maintaining at distance at least 12-18 inches and say,**

*“Excuse me [instructor’s first name], this is [your first name]*

*at [your location]. I have a question (or I have a comment).”*

Then release the push to talk button. This is important.

Until you release the button, you will not be able to hear the instructor.

The instructor will acknowledge you and then ask for your question or comment. Stating your name and location not only helps the instructor, but also helps other students who are participating at different locations to get to know their classmates.

## COURSE OVERVIEW

### **Why a *Managing for the 21<sup>st</sup> Century: EEO Fundamentals for Supervisors* program?**

Learning and applying the basic foundation of Equal Employment Opportunity in the workplace can help you to recognize your ability and responsibility to ensure a more productive staff. EEO provides a framework for the supervisor to prevent issues, and resolve those that may arise. Participants will analyze hypotheticals and real-life case studies to apply EEO principles including Reasonable Accommodation, and will learn proactive measures they can take to manage more effectively.

### **Target Audience**

Managers and supervisors at all levels who are required to receive EEO training, and all who desire to avail themselves of tools that they can use to address EEO and Reasonable Accommodation issues in their workplace.

### **Program Timing**

This course will last 3 hours.

### **Learning Objectives**

At the end of this TEL program, participants will be able to:

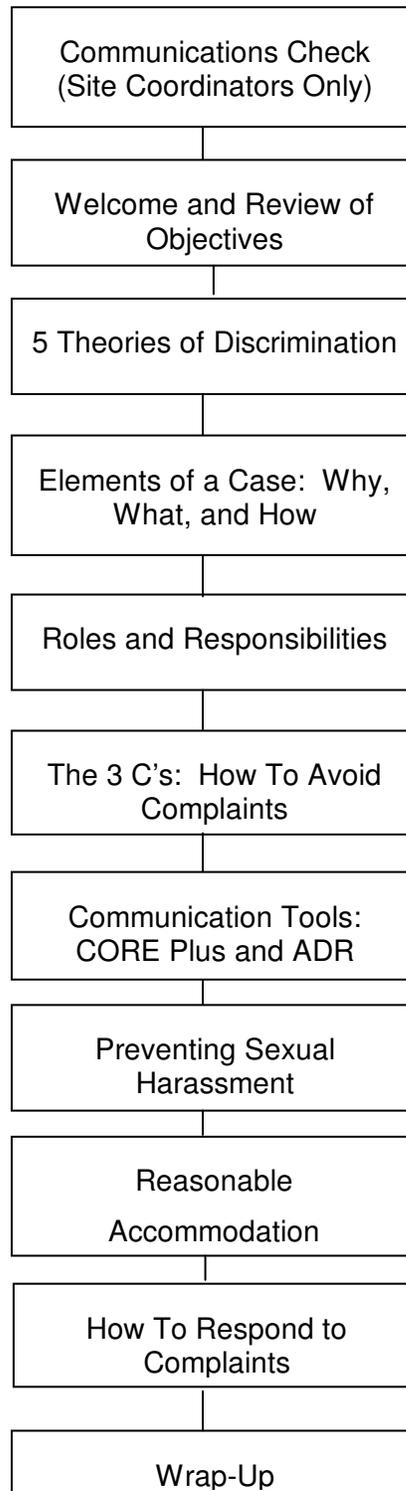
- Demonstrate a basic understanding of the EEO complaint process.
- Identify specific roles and responsibilities of supervisors, employees, and EEO staff in maintaining a work environment that reduces the likelihood of EEO complaints.
- Identify ways that YOU can avoid/minimize the likelihood of being the subject of an EEO complaint.
- Recognize what to do (and what not to do) if you receive an EEO complaint.

### **Site Point-of-Contact Responsibilities**

The TEL Station Site Point-of-Contact must reserve the training room, notify employees that the park will be participating in this TEL training event, make sure the Participant Guide is available to students, set up the TEL Station on the day of the training, ensure students sign in on the attendance roster, and finalize the Class Attendance Roster in DOI Learn.

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# Course Map: Managing for the 21<sup>st</sup> Century



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# What Are Your Questions About the EEO Process?

## ***Exercise:***

What questions do you want to have answered during our time together today? Discuss your thoughts as a group at your site and be ready to share your list!

**Capture your thoughts here**

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Add items that you missed

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## WRITE THIS DOWN

- It's business, not personal!
- Legitimate, non-discriminatory management/business reasons
- Cannot manage by fear of having a complaint filed against you
- "Reasonable Person"

## BASIS FOR FILING A COMPLAINT

Alleged discrimination can be based on

- Race
- Color
- Religion
- Age
- National Origin
- Sex
- Mental or Physical Disability
- Reprisal

Added by Executive Order

- Sexual Orientation
- Parental Status
- Genetic Information

Final adjudication will be at the Secretary level only.

## ELEMENTS OF A DISCRIMINATION CASE

The three basic elements of a discrimination case are:

- Basis(es): **Why?**
- Adverse Action/Decision: **What?**
- Injury/Harm Suffered: **How?**



## THEORIES OF DISCRIMINATION

### Disparate treatment

Disparate treatment - treating a person differently from someone outside of that person's protected class.

### Theory #1: Proof of Theory

- Three parts, burden shifting-shifting Analysis
  1. The complainant must establish a *prima facie* case of discrimination;
  2. The Agency must articulate a legitimate non-discriminatory reason for its action;  
and
  3. The complainant must demonstrate that the Agency's reason is a pretext for prohibited discrimination.
- Burden of Production: Obligation to come forward with evidence that assertion is true.
- Burden of Persuasion: Complainant must come forward to convince the fact-finder that the assertion is true.

### *Prima Facie* case:

1. Complainant is a member of a protected class.
2. Agency took some employment action.
3. Agency treated the Complainant differently than similarly-situated employees outside of the protected class.

## **Theory #2: Disparate or Adverse Impact**

- **Disparate/Adverse Impact** Even where an employer is not motivated by discriminatory intent, Title VII prohibits the employer from using a facially neutral employment practice that has an unjustified adverse impact on members of a protected class.

## **Theory #3: Hostile Work Environment (HWE) – all elements must be present**

1. Condition of employment changed by the alleged discrimination
2. Must be severe and pervasive
3. A series of acts
  - Except on rare occasions, one incident does not equate to a hostile work environment
4. Involves harassment (sexual & non-sexual)

### **Remember:**

This theory focuses on the work environment, not personnel actions.

## **Theory #4: Failure to make Reasonable Accommodation**

1. Disability discrimination
2. Religious discrimination

## **Theory #5: Retaliation/Reprisal for Protected Activity**

- Allegations that management official took action against complainant because complainant participated in prior EEO activity
  - Prior activity includes filing a complaint, providing testimony in an EEO case, opposing discrimination
    - Employee has the burden of proof and must establish a *prima facie* case
      - They engaged in protected activity
      - Has been impacted by a decision or action
      - Causal connection between activity and action

**EXERCISE: WEEKEND WORSHIPER**

Let's revisit our first scenario from page 7. **Your staff's busiest time is the weekend, Friday through Sunday. During an interview for a potential new seasonal employee, the individual requests to have Sundays off for church attendance and worship. You are very impressed with this person's qualifications, and they come with excellent recommendations. Do you offer them the job? If so, do you accommodate their request? Explain.**

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What discrimination theory, if any, would apply here?

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**EXERCISE: SNOW ON THE MOUNTAIN**

Let's revisit Scenario #1. **You notice a couple with gray hair requesting information on hiking a trail. They are dressed appropriately for the walk, which is approximately a mile on a fairly steep slope, and have sunscreen and water bottles. The employee cautions them about the possibility of physical distress or discomfort which could put them in danger as they walk the trail. You did not notice the same employee giving that caution to a younger group earlier. Is this a problem? Why or why not?**

What discrimination theory, if any, would apply here?

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## EEO PROCESSES

### Informal EEO Process:

- Available for employees when they feel that they have been discriminated against.
- Employees/Applicants have 45 days from the date of the action that was taken or that they first became aware of the action.
- EEO Counselor has **30 days** (up to **90 days** for an extension or mediation) to attempt resolution.
- If no resolution, aggrieved is given a *Notice of Right to File* a formal complaint.

### Counselor Role:

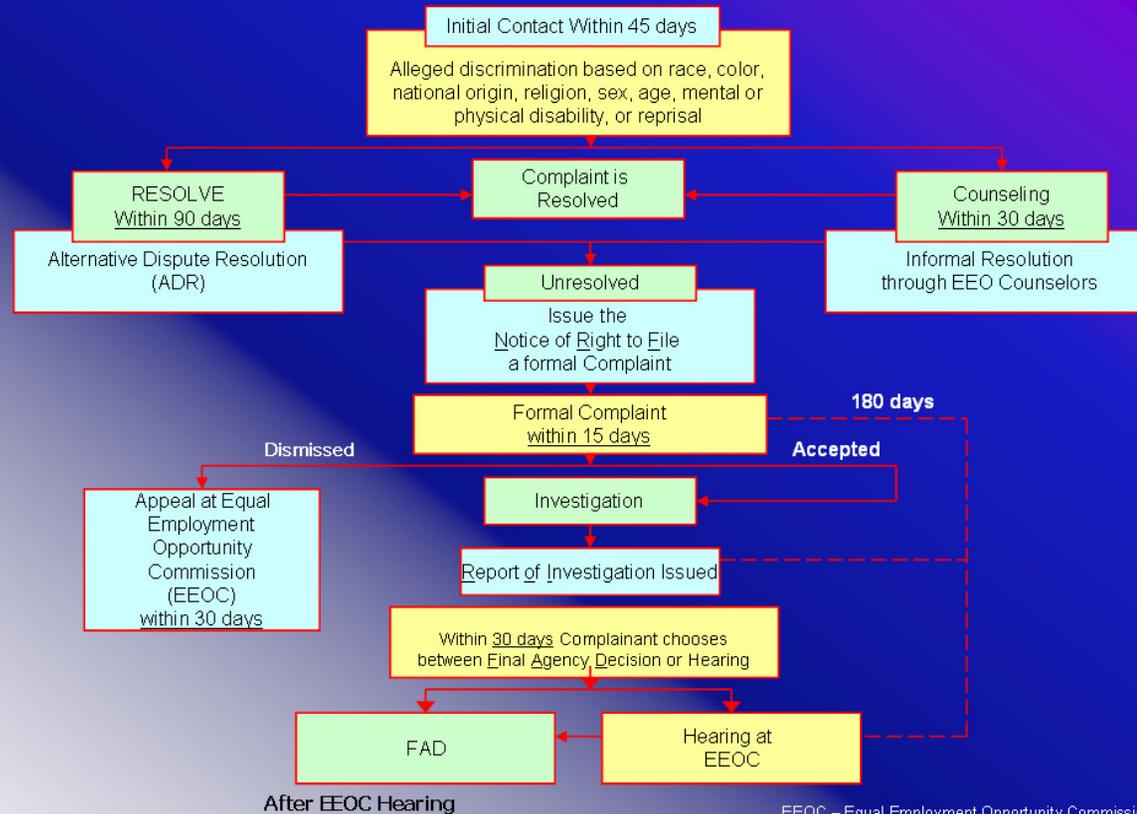
- Is trained to provide guidance
- Interviews person alleging discrimination
- Conducts fact-finding, speaks with management
- Is not a representative for employees or management
- Attempts to resolve issue(s)
- Neutral role and talks to both parties

Informal EEO Process	Formal EEO Process
<ul style="list-style-type: none"> <li>• Aggrieved has <b>45</b> days to contact EEO Counselor after the alleged discriminatory act.</li> <li>• Witnesses (including management officials) must cooperate fully with investigator.</li> </ul>	<ul style="list-style-type: none"> <li>• Aggrieved must file complaint within <b>15 days</b> of receipt of Notice of Right to File a formal complaint.</li> <li>• Process allows for <b>180 days</b> to investigate complaint and issue <i>Report of Investigation (ROI)</i>.</li> <li>• Witnesses (including management officials) must cooperate fully with investigator.</li> <li>• Aggrieved has <b>30 days</b> from receipt of ROI to request a hearing or a Final Agency Decision (FAD).</li> </ul>

### What To Do if You Become the Subject of a Complaint

- Don't panic
- Communicate with SHRO, EEO staff, and your supervisors
- Be forthcoming and helpful
- Try not to take it personally
- Keep all documents related to your employment decision

# EEO Process Flowchart



After EEOC Hearing

Appeal Phase – Complainant has a right to file with EEOC's Office of Federal Operations.  
Judicial Phase – Complainant has a right to file a civil action in an appropriate Federal Court.

EEOC – Equal Employment Opportunity Commission  
 FAD – Final Agency Decision  
 ADR – Alternative Dispute Resolution

## Roles and Responsibilities

- Employee/Applicant
  
- Supervisor
  
- Visitor/NPS Partner/Contractor
  
- EEO Counselor
  
- Others

## Tools of the Trade: CORE Plus and Alternative Dispute Resolution (ADR)

Although CORE Plus and ADR both rely on mediation to resolve workplace disputes, there is a difference:

- CORE Plus focuses on disputes in the early stages before a redress program has been entered.
- ADR focuses on issues that are in some type of redress forum.

Reasons to Use CORE Plus/ADR:

- Alternative to using conventional avenues of redress
- Allows the use of a trained and experienced mediator to facilitate the discussion between the parties in a neutral setting
- Mediator is a neutral person who has no financial interest or personal gain in the outcome of the mediation
- Mediation allows the parties to find solutions that address the underlying causes of the conflict
- The parties sign an agreement that has been developed using their own words

What CORE Plus/ADR does NOT do:

- Force an employee to give up their redress process rights if an agreement is not reached
- Replace the discrimination complaint or grievance (administrative or negotiated) processes or their associated timeframes
- If an issue is not successfully resolved through the ADR process, the employee is free to continue to pursue their grievance or complaint

## Preventing Sexual Harassment

Sexual harassment is d\_\_\_\_\_ or r\_\_\_\_\_ unsolicited v\_\_\_\_\_  
c\_\_\_\_\_, g\_\_\_\_\_, or p\_\_\_\_\_ c\_\_\_\_\_ of a  
sexual nature which is u\_\_\_\_\_.

Types of Sexual Harassment:

- Quid pro quo—a person is requested to provide sexual favors in return for some other benefit.
  - e.g., Sleep with me and I will give you a promotion
- Hostile Work Environment—the work environment is so offensive as to distract the person from being able to work.
  - e.g., lewd comments, jokes, pictures, screen savers, etc.
  -

*Exercise: Jaunty Joe*

Joe has a private office and a computer assigned to him. You are Joe's supervisor. Your IT staff informs you that the office's network management software has detected that Joe's computer has been used to visit explicit sexually oriented web sites. Joe admits that he has visited these sites during his personal time before and after work and at lunch.

**Sexual Harassment? Y or N**

What if he was printing the pictures on the office printer? Does this make a difference?

### Agency/Employer's Responsibility

- Generally responsible for supervisors' actions
- Take action to prevent sexual harassment
- Have anti-harassment policy

### Supervisor's Responsibility

- Must take action in response to allegations of sexual harassment
  - Appropriate, professional, and **PROMPT** response
  - Investigation
  - Put (alleged) sexual harassment offender "on notice"

*Exercise: Is It Any of My Business?*

A supervisor from another division contacts you in regard to one of your employees. It appears that your employee is having an affair with the other supervisor's employee. It appears that your employee approached the second employee while they were with their spouse at a campground. No mishap occurred, but the other supervisor has asked you to talk to your employee.

**Is this sexual harassment?**

**What do you do or say?**

**Tips for Preventing Sexual Harassment:**

- Create a harassment-free environment
- Monitor the work environment
- Be aware of policy
- Investigate complaints
- Maintain confidential written record
- Take appropriate action
- Protect against retaliation

**Take all complaints seriously, regardless of how minor they may seem.**

## Reasonable Accommodation

### What is it?

**Reasonable Accommodation** is a logical change or adjustment to a job or worksite that makes it possible for qualified employees with disabilities to perform the essential functions of the position in question. The other two categories of reasonable accommodation: modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job; and modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment.

- For an employee or applicant, the *request may be made verbally or in writing*.
  - To his/her supervisor, another supervisor or manager in his/her immediate chain of command, Superintendent, Asst Regional Director, Equal Opportunity Manager, Servicing Personnel Office, or other appropriate office
  - The interviewer from the office having the vacancy for which he/she wants to be considered
  - The Employee's/Applicant's request must state, at a minimum, that he/she needs an adjustment or change at work on the in the application process for a reason related to a medical condition.

### Reasonable Accommodation timelines:

- The supervisor/manager must review the request and issue a written decision to the Employee or Applicant within ***ten (10) business days***.
  - **Key Note:** If medical documentation is required the timeframe stops until the information is received.
  - The bureau/office also has the right to have medical information reviewed by a medical expert.
- *If the accommodation is granted the deciding official will provide the accommodation within **twenty (20) business days**.*

*Exercise: Eddie the Engineer*

Eddie is applying for an Engineering Position, which carries a positive education requirement. You find out when he comes in for the interview that he is in a wheelchair. You describe the duties to him and ask if he can perform the duties with or without any Reasonable Accommodation. He tells you that he can, but during the course of the interview you find that he does not have a Degree in Engineering.

Is Eddie a qualified individual with a disability?

## **Steps for Supervisors To Process a Reasonable Accommodation Request:**

**Step 1:** Determine if the person requesting an accommodation is an individual with a disability.

**Step 2:** Determine whether medical documentation is required to make a determination in granting reasonable accommodation.

- Supervisor has the right to request medical documentation when a medical condition or impairment is not obvious, and s/he may ask for supplemental information.

**Step 3:** Work with your SHRO to determine if the person is (1) a “qualified” individual with a disability and (2) able to perform the essential functions of the position.

- A “*qualified*” employee with a disability is one who is:
  - able to perform the essential functions of his/her position, or another vacant, funded position for which they are qualified, with or without accommodation; or,
  - otherwise qualified for his/her job, for another position at the same grade level, or at a lower grade level, by virtue of education, experience, physical and mental ability, and any other appropriate factors; and,
  - no potential to be a health and safety risk to him/her, or others.
- *Essential functions* of a position are those duties that are so fundamental to the position that the individual cannot do the job without being able to perform them.

**Step 4:** Determine whether the requested/preferred accommodation is reasonable and/or imposes an undue hardship on the Bureau.

- Is there an accommodation available that will help the individual to perform the essential duties of:
  - the current position; or,
  - another vacant, funded position in which s/he could be placed, *even* if at a lower grade?
- Is this an undue hardship on the Bureau? “*Undue hardship*” means an action that requires significant difficulty
- Overall resources of the DOI must be considered before making a determination that an accommodation presents an undue hardship.

**Step 5:** Determine whether the chosen accommodation is effective.

- If an accommodation proves ineffective for whatever reason, management should work promptly and diligently to make the changes necessary to achieve an effective accommodation.

**Step 6:** Complete the review and assessment process.

## The 3 C's: How To Avoid Being the Subject of a Complaint

- **Communication** (with your superiors as well as your employee)
- **Consistency** (your decision/action/lack of either impacts your entire staff)
- **Cooperation** (be sure not to develop a defensive posture – if you are consistent, and have sought input from EEO and other trusted advisors, and have made a good faith effort to be fair and reasonable, you should not fear cooperating with an EEO investigation)

### Remember WOW:

- It's business, not personal!
- Legitimate, non-discriminatory management/business reasons
- Cannot manage by fear of having a complaint filed against you
- Do not take any issue raised involving sexual harassment lightly. No matter how minor it is!
- Your employees are watching

## To Receive Credit for *Managing for the 21<sup>st</sup> Century: EEO Fundamentals for Supervisors*

Take the **on-line evaluation** at: [www.nps.gov/training/tel](http://www.nps.gov/training/tel)

- Click on the DOI Learn tab

Go to the link under Class Evaluations for *Managing for the 21<sup>st</sup> Century: EEO Fundamentals for Supervisors*.

- Please complete the evaluation by **April 30, 2010**.

Also, sign the **Class Attendance Roster**.

## Questions After the Course?

### Contact:

**Maxie Hamilton, NPS-Pacific West Region**  
**Equal Opportunity Manager**  
**[maxie\\_hamilton@nps.gov](mailto:maxie_hamilton@nps.gov)**  
**Office: 510-817-1316**  
**Fax: 510-817-1486**

## Appendix A: Federal Laws That Prohibit Discrimination in the Workplace

- Title VII of the Civil Rights Act of 1964
  - Prohibits employment discrimination based on **race, color, religion, sex, or national origin.** (Title VII)
- Equal Pay Act of 1963
  - Protects men and women who perform substantially equal work in the same establishment from **sex-based wage discrimination.** (EPA)
- Age Discrimination in Employment Act of 1967 (ADEA)
  - Protects individuals who are **40 years of age or older.**
- The Rehabilitation Act of 1973
  - Prohibits discrimination against **qualified individuals with disabilities.**
- Executive Order 12106 and Executive Order 13087 (amended EO 11478)
  - Prohibits discrimination on the basis of **sexual orientation.**
- Executive Order 13152
  - Amends EO 11478 to prohibit discrimination on the basis of **status as a parent.**
- Executive Order 13145
  - Amends Title VII of the Civil Rights Act of 1964 to prohibit discrimination on the **basis of genetic information.**

**Appendix B: Regional EEO Managers and Staff for the National Park Service  
as of April 5, 2010**

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[907] 644-3818 fax

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**HARPERS FERRY, WV**

***Magaly Green***

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[303] 969-2530 fax

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**NORTHEAST REGION**

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***Vacant***

NE Regional Equal Opportunity Specialist

Shenandoah National Park

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**PACIFIC WEST REGION**

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## Appendix C: Links to Government EEO Resources and Information

Code of Federal Regulations (CFR) 29,  
Part 1614: Federal Sector Equal  
Employment Opportunity  
<http://www.eeoc.gov/federal/1614-final.html>

National Park Service Equal Opportunity  
Office  
<http://inside.nps.gov/waso/waso.cfm?lv=2&prg=22>

Federal Equal Employment Opportunity  
Commission (EEOC) Home Page  
<http://www.eeoc.gov>

EEOC Management Directive-110  
<http://www.eeoc.gov/federal/md110.html>

### Direct Links to EEOC “Fact” Sites:

Age Discrimination  
<http://www.eeoc.gov/facts/age.html>

Disability Discrimination  
<http://www.eeoc.gov/types/ada.html>

National Origin Discrimination  
<http://www.eeoc.gov/origin/index.html>

Race / Color Discrimination  
<http://www.eeoc.gov/facts/fs-race.html>

Religious Discrimination  
<http://www.eeoc.gov/facts/fs-relig.html>

Retaliation  
<http://www.eeoc.gov/types/retaliation.html>

Sex-based Discrimination  
<http://www.eeoc.gov/types/sex.html>

Sexual Harassment  
<http://www.eeoc.gov/facts/fs-sex.html>

### Reasonable Accommodation

Computer/Electronics Accommodation  
Program (CAP: a U.S. Dept. of Defense-  
sponsored program, to which DOI  
subscribes)  
<http://www.tricare.mil/cap/>

DisabilityInfo.gov (One-stop resource for  
individuals with disabilities)  
<http://www.disabilityinfo.gov/>

Job Accommodation Network (Ofc. of  
Disability Employment Policy, U.S. Dept of  
Labor)Office of Disability Employment  
Policy  
<http://www.jan.wvu.edu/>

Office of Personnel Management (OPM)  
<http://www.opm.gov/disability/index.asp>

### Other General Resources

Department of the Interior Office of Civil  
Rights Home Page  
<http://www.doi.gov/diversity/>

Federal Merit Systems Protection Board  
(MSPB):  
<http://www.mspb.gov/>

Office of Special Counsel  
[www.osc.gov](http://www.osc.gov)

U.S. Commission on Civil Rights  
<http://www.usccr.gov/>

U.S. Department of Labor  
<http://www.opm.gov/>

U.S. Department of Justice  
<http://www.usdoj.gov/>